

**AMENDMENT TO  
TAX COLLECTION AGREEMENT**

This agreement is an amendment to the Tax Collection Agreement dated June 17, 1976, between the Department of Revenue of the State of South Dakota (the "State") and the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Reservation (the "Tribe"), an Indian tribe organized under the Indian Reorganization Act.

1. Paragraph 1 of the original agreement is amended to read as follows:

1. Collection of Tribal Retail Sales, Service, Use, Contractors' Excise, and Cigarette Taxes. Provided that the subject taxes remain substantially similar to the corresponding state taxes, the State agrees to collect and administer on behalf of the Tribe the various taxes imposed by the tribal retail sales, service, use, Contractors' Excise, and cigarette tax ordinances; and to issue pertinent licenses, permits and stamps.

2. Paragraph 2 of the original agreement is amended to read as follows:

2. Remittance of Tax Proceeds. The State agrees to remit to the Tribe an amount equal to 58% of the total proceeds collected pursuant to this agreement within thirty days of collection by the State. Before remitting the 58% the State may deduct the amount of any refunds made and costs of administration not to exceed 1% of the amount remitted to the Tribe. Unless otherwise requested in writing by the Tribe the remittance shall be by certified check, payable to the order of the Tribe.

3. Implementation: The undersigned parties agree that one of the purposes of this agreement is to insure that persons subject to taxes covered by this agreement pay only one tax either that of the Tribe or the State. Therefore, this agreement applies to all receipts reportable to the Department of Revenue after January 1, 1986.

In Witness whereof, the State and the Tribe have caused this Agreement to be executed by their authorized officers.

STATE OF SOUTH DAKOTA

By [Signature]  
Secretary of Revenue

Dated 6 Nov 85

Approved by:

[Signature]  
Governor

Dated 11-19-85

[Signature]  
Attorney General

Dated 11-22-85

CHEYENNE RIVER SIOUX TRIBE

By [Signature]  
Chairman

Dated 11/13/85

By [Signature]  
Secretary

Dated 11-13-85

## RESOLUTION NO. 243 85-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws, and

WHEREAS, on June 17, 1976, the Tribe has entered into a Tax Collection Agreement with the State of South Dakota authorizing the South Dakota Department of Revenue to act as the Tribe's collection agent for Ordinance No. Twenty-five -- Retail Sales and Use Taxes and Ordinance No. Twenty-six a -- Cigarette Tax, and

WHEREAS, on October 29, 1985 the Cheyenne River Sioux Tribe and the State of South Dakota met regarding the renegotiation of the Tax Collection to discuss the Tribe's wanting a higher percentage of the taxes, and

WHEREAS, as result of the renegotiation meeting, the Tribe's percentage will increase from 50% to 58% of the taxes, and

WHEREAS, in addition to the increase, the Tribe and the State agreed to also amend the Tax Collection Agreement to include Ordinance No. Forty -- Contractor's Excise Tax along with Ordinance Nos. Twenty-five and Twenty-six a, and

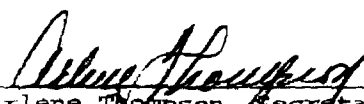
WHEREAS, Ordinance No. Forty needs to be revised to be similar to the South Dakota's Contractor's Excise Tax to facilitate the administration and enforcement of the Tribal Ordinance No. Forty, and

THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribal Council hereby supports and approves of the above, and

BE IT FURTHER RESOLVED, that the Tribal Chairman or Vice-chairman and the Secretary of the Cheyenne River Sioux Tribe are hereby authorized to sign the amended Tax Collection Agreement and this resolution institutes the consent and affirmation of the Cheyenne River Sioux Tribe.

## CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 13, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 8th day of November, 1985, Regular Session; and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 8 for, 1 against, 4 not voting (CHALLENGED DELEGATES BY BIA DID NOT VOTE, INCLUDING VICE-CHAIRMAN) 1 vacancy and 1 absent (CHALLENGED DELEGATE BY BIA ABSENT).

  
Arlene Thompson, Secretary  
Cheyenne River Sioux Tribe

## CHEYENNE RIVER SIOUX TRIBAL COUNCIL

## Tribal Memorandum:

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Arlene Thompson, Tribal Secretary

SUBJECT: RESOLUTION NO. 243-85-CR: Amending the Tax Collection Agreement with the State of South Dakota and revising Cheyenne River Sioux Tribal Ordinance No. Forty.

DATE 12/10/85

Transmitted herewith, are two (2) originals and five (5) copies of Resolution No. 243-85-CR, amending the Tax Collection Agreement with the State of South Dakota and revising Ordinance No. 40.

Pursuant to your letter dated November 20, 1985, Resolution No. 243-85-CR is hereby resubmitted with proper certification. In compliance with the Area Director's letter of June 18, 1985, subject resolution has been reaffirmed on December 5, 1985, Regular Session, by only those members that are duly recognized.

cc: Chairman  
Treasurer  
Administrative Officer  
Liaison Officer  
Central Records  
Revenue Department  
Councilmembers  
File/2

# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE SALE OF CERTAIN	)	DECISION AND ORDER
TELEPHONE EXCHANGES BY U S WEST	)	REGARDING SALE OF THE
COMMUNICATIONS, INC. TO CERTAIN	)	<u>BONESTEEL EXCHANGE</u>
TELECOMMUNICATIONS COMPANIES IN	)	
SOUTH DAKOTA	)	TC94-122 - BONESTEEL

## PRELIMINARY STATEMENT

On December 20, 1994, a Joint Application was filed by U S WEST Communications, Inc. (U S WEST), and twenty telecommunications companies (Buyers) requesting that the South Dakota Public Utilities Commission (Commission) approve the sale by U S WEST of 67 local telecommunications exchanges to the Buyers or their affiliates. Specifically, the filing sought:

1. A declaration that the sale and transfer of the exchanges do not require Commission approval or in the alternative that the Commission knows of no reason why the sale and transfer should not occur; and
2. An order from the Commission that U S WEST's gain from the sale be booked to Account 7350 of the Uniform System of Accounts (USOA) as nonoperating income not available for ratemaking purposes.

The Commission assumed jurisdiction over this docket pursuant to its authority under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, and 49-31-20. The Commission set an intervention deadline of January 25, 1995. Subsequently, the following parties applied for and were granted intervention: AT&T Communications of the Midwest (AT&T); South Dakota Radio Common Carriers [composed of Pierre Radio Paging and Telephone, Inc.; Vantek Communications, Inc.; B&L Communications; Mitchell Two Way Radio; Nelson Electronics, Inc.; Booker Communications; Dakota Electronics; Rees Communications; A & M Radio, Inc.; Frey's Electronics; and Milbank Communications]; Roger D. McKellips; City of Mobridge; Walworth County; Doug Scott; Alcester Telephone System User's Group [composed of Phyllis Bergdale; Bernard Bergdale; Jay Clark; Cleo Clark; Wendell Solberg; Kathy Solberg; Dennis Jones; Robin Jones; Ronald Treiber; Becky Treiber; Gary McKellips; Deb McKellips; David Broadwell; Kathy Broadwell; Donowan Larson; Marlys Larson; Glenice Pilla; and Larry Pilla]; Midco Communications; LDDS; TeleTech; TCIC; FirstTel; TelServ; MCI; Corson County Commission; Thomas Brunner; Gary Brunner; Deanna J. Mickelson; Marjorie Reder; Duane Odle; Baltic Telecom Cooperative; Barbara Mortenson as an individual and a group of telephone users known as the Henry Users Citizens Group. LDDS later filed a petition to withdraw as an intervenor which was granted by the Commission. On March 30, 1995, Senate Bill 240, later codified as SDCL 49-31-59, became effective. The Commission added this statute to the other statutes under which it had asserted its jurisdiction.

On March 29, 1995, the Commission issued an Order for and Notice of Hearing for six regional evidentiary hearings to be held at various locations throughout the state of South Dakota. Notice of said hearings was given to the public by newspaper publications and radio announcements; personal notice was given to all parties to the docket. Pursuant to said Order of the Commission, and subsequent amended Orders, the following regional evidentiary hearings were held:

1. April 17, 1995, at the City Auditorium, 212 Main Street, Mobridge, South Dakota, for public testimony on the sale of the Selby, Gettysburg, Roscoe, Onida, Bowdle, Morristown, Timber Lake, Lemmon, Eureka, Ipswich, McIntosh, and Mobridge exchanges.
2. April 18, 1995, at the Community Center, 1401 LaZelle, Sturgis, South Dakota, for public testimony on the sale of the Nisland, Newell, and Hermosa exchanges.
3. May 1, 1995, at the St. Mary's Hall, 305 West Third, Winner, South Dakota, for public testimony on the sale of the Winner, Burke, Bonesteel, Reliance, Murdo, Lake Andes, Wagner, Gregory, Witten, Clearfield, Presho, and Platte exchanges.
4. May 3, 1995, at the Lake Area Technical Institute, Student Lounge, 230 11th Street NE, Watertown, South Dakota, for public testimony on the sale of the Webster, Clark, Florence, Hayti, Bradley, Willow Lake, Waubay, Castlewood, Summit, Peever, Veblen, Wilmot, Howard, Oldham, Revillo, and South Shore exchanges.
5. May 4, 1995, at the Johnson's Fine Arts Center, Room 134, Northern State University Campus, Aberdeen, South Dakota, for public testimony on the sale of the Britton, Pierpont, Roslyn, Wessington Springs, Mellette, Bristol, Frederick, Hecla, Doland, Wolsey, and Cresbard exchanges.
6. May 5, 1995, at the Alcester High School Gymnasium, Fifth and Iowa, Alcester, South Dakota, for public testimony on the sale of the Marion, Tyndall, Centerville, Viborg, Lesterville, Tabor, Hudson, Tripp, Parkston, Salem, Alcester, Bridgewater, and Canistota exchanges.

On May 1, 1995, U S WEST and the Buyers filed an amended Joint Application. In its amended Joint Application, U S WEST and the Buyers stated that since the filing of the Joint Application in December, "the sale of several exchanges to certain buyers has been reevaluated by the Buyers." They requested the following changes:

1. In the Agreement with Golden West Telephone Properties, Inc., delete in Exhibit A the Newell exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly;
2. In the Agreement with West River Cooperative Telephone Company, Inc. (Bison), delete in Exhibit A the McIntosh exchange and add the Newell

and Nisland exchanges, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly; and

3. In the Agreement with Cheyenne River Sioux Tribe Telephone Authority, delete in Exhibit A the Nisland exchange and add the McIntosh exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly.

Due to the amended application, the Commission set a new intervention deadline of May 12, 1995. Subsequently, the city of McIntosh and Corson County applied for and were granted intervention. Because the application had been amended, the Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, McIntosh, South Dakota, for public testimony.

At each regional evidentiary hearing, representatives from U S WEST and each purchasing company were present to testify and were available for cross-examination.

On April 5, 1995, the Commission issued a Notice of Hearing setting the final hearing for June 1-2, 1995. All prefiled testimony was required to be filed by May 25, 1995. A pre-hearing conference was held on May 22, 1995.

The final hearing was held on June 1-4, 1995. At said final hearing, 42 witnesses testified and were available for cross-examination, 126 exhibits were offered and received into the record at the hearing, and an additional 19 exhibits were filed by June 19, 1995, which was the deadline set by the Commission for late-filed exhibits.

On June 7, 1995, the Commission issued a Post-hearing Order requesting briefs on certain issues and allowing the submission of Proposed Findings of Fact and Conclusions of Law. On June 19, 1995, the parties submitted late-filed exhibits. On June 23 and July 3, 1995, the parties filed their post-hearing briefs and Proposed Findings of Fact and Conclusions of Law.

On July 13, 1995, at a duly noticed meeting, the Commission voted to approve the sale of the Bonesteel exchange to Golden West Telecommunications Cooperative, Inc., which is purchasing the Bonesteel exchange through its subsidiary G.W.S., Inc. [hereinafter referred to as Buyer]. With regard to the purchase of the Bonesteel exchange, in conjunction with the sale of all the other exchanges, the Commission has reviewed all exhibits presented at the seven regional evidentiary hearings, and the final hearing occurring in Pierre, and has considered all testimony provided. The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

### **FINDINGS OF FACT**

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. On or about December 7, 1994, U S WEST entered into purchase agreements for the sale of 67 local exchanges with 20 local exchange telecommunications companies. On December 20, 1994, U S WEST and the Buyers filed a Joint Application for a Commission Declaration on the Sale and for Proper Accounting Treatment of any Gain. Exhibit 29. U S WEST and the Buyers filed all 20 purchase agreements along with the Joint Application. Exhibits 31-50. One of the purchase agreements entered into was between U S WEST and the Buyer. Exhibit 34. The Joint Application was amended on May 1, 1995. Exhibit 30.

3. The purchase agreement entered into between the Buyer and U S WEST states as follows:

Seller and Buyer agree to promptly file any required application and to take such reasonable action as may be necessary or helpful (including, but not limited to, making available witnesses, information, documents, and data requested by the PUC) to apply for and receive approval by the PUC for the transfer of Assets and Authorities to Buyer.

Exhibit 34, Section 6.3. subparagraph D.

4. Golden West is a cooperative which was incorporated in 1952 and has been providing telephone service for the past 40 years. Golden West currently has a work force of 82 employees who serve approximately 13,000 access lines out of the headquarters office in Wall, the district office in Hot Springs, and from several service outposts located throughout the service area. The general manager of Golden West is Jack Brown, who has been with Golden West for 36 years in a number of positions, and has served as general manager for the past four years. Exhibit 9 at page 1.

5. Golden West owns the former GTE areas in South Dakota, which comprises 8,300 access lines in eastern, central and southwestern South Dakota; and the former Vivian Telephone Company, which has 112 access lines. Exhibit 9 at page 1.

6. All 36 of Golden West's exchanges are served by digital switchboards. This includes nine Northern Telecom offices and 18 remote offices in one area; two Stromberg Carlson host offices, seven remotes and one Northern Telecom office in one area; and an AFC fiber terminal which ties the former Vivian exchange back to a host Northern Telecom office in Phillip. Exhibit 9 at page 3.

7. Golden West currently has more than 1,000 miles of fiber optic plant in place, providing both long distance and local services to its customers. Exhibit 9 at page 3.

8. A duly noticed public hearing was held at Winner, South Dakota, on May 1, 1995, at the St. Mary's Hall, beginning at 7:00 p.m. concerning, along with other sales, the sale of the Bonesteel exchange. There has been no public opposition to the sale of the Bonesteel exchange to the Buyer. On June 1-4, 1995, in Pierre, South Dakota, a final hearing was held concerning all of the proposed exchange sales.



9. Jon Lehner of U S WEST testified in his prefiled testimony that "USWC has limited resources to devote to an increasing demand for network infrastructure improvements and new services. Because of growing competition in urban areas, it will be increasingly difficult to make future investments in rural exchanges where USWC's growth opportunities are expected to be low." Exhibit 72 at page 5. Mr. Lehner also testified that "[o]perationally, the buyers are well positioned to provide quality service because they have personnel and supervision dispersed throughout these areas today. All of this translates ultimately to better service for customers remaining with USWC and for the customers in the exchanges to be operated by the buyer." Exhibit 72 at page 6.

#### ADEQUACY OF LOCAL TELEPHONE SERVICE

10. In order to adequately serve the U S WEST areas, Buyer anticipates adding five service representatives and two additional accounting people to be based at the headquarters office in Wall. Buyer has also visited with and expects to hire many of the current U S WEST maintenance people in the purchased areas. In all, the Buyer expects to hire an additional 10 to 12 outside plant people. Exhibit 9 at page 5.

#### REASONABLENESS OF RATES FOR LOCAL SERVICE

11. Buyer's feasibility studies indicate that the cost of coordinating and upgrading equipment will not affect the local rates of the Bonesteel exchange. Exhibit 9 at page 5.

12. Buyer intends to charge the same local rates as U S WEST did in the exchange. Exhibit 9 at page 5.

13. Buyer's pro forma financial projections and the testimony of Kevin Doyle at the hearing support Buyer's statements regarding rates. Exhibit 117; Testimony of Kevin Doyle. Pierre Hearing Transcript at 873-934.

14. Pursuant to section 5.1(G) of the contract, the Buyer is prohibited from seeking recovery of the acquisition adjustment through its regulated interstate or intrastate rates, including from federal or state universal service funds. The acquisition adjustment is the amount a Buyer paid over net book value. A representative of the Buyer also testified that the Buyer would not recover any of the acquisition adjustment through local rates. Testimony of Doug Martin, Pierre Hearing Transcript at pages 214-215.

#### PUBLIC SAFETY ISSUES

15. Golden West is capable of providing either E911 or basic 911 service in all of its service areas. Golden West has also taken a proactive stance in providing affordable firebar service to many of the rural fire departments within its service areas, and recently decreased the former GTE rate. Exhibit 9 at page 2.

### ABILITY OF BUYER TO PROVIDE SERVICE

16. Buyer is fit, willing and able (financially and otherwise) to purchase and thereafter operate, maintain and upgrade to the level required by the Commission the facilities of the Bonesteel exchange proposed to be purchased by Buyer. Exhibit 9; Exhibit 117.

17. Buyer has the ability to obtain capital, and the incentives to invest in the acquired exchange. The sale is therefore in the public interest for the customers in the Bonesteel exchange, who should see improvements and new services more quickly than if U S WEST continued to operate the exchange. Testimony of Kevin Doyle, Pierre Hearing Transcript at pages 882-883.

18. Buyer has obtained commitments to finance its acquisition of the exchange, and has demonstrated the adequacy of such financing and has provided assurances that it will not harm the purchased exchange's operation. Testimony of Kevin Doyle, Pierre Hearing Transcript at pages 882-883.

19. Buyer has filed with the Commission pro forma financial projections which were subject to cross-examination before the Commission. Exhibit 117.

20. Buyer plans to make the following state-of-the-art services available in the Bonesteel exchange: (1) SS7 capability, (2) CLASS services, (3) ISDN, (4) switched 56 kb. (5) SONET, and (6) voice mail. Exhibit 9 at page 4. Buyer has submitted a three-year plan for improvements to the system with the Commission. Exhibit 165.

21. Buyer intends to provide the following capabilities in the new exchange: distance learning and telemedicine. Buyer will promote usage of those services. Golden West has been serving in rural communities for many years, and recognizes and understands the importance of continuing to support economic development. Exhibit 9 at page 6.

22. Buyer does not anticipate any change in the Extended Area Service arrangements that are currently being offered. Exhibit 9 at page 6.

### PROTECTION OF THE PUBLIC INTEREST

23. Buyer's purchase of the U S WEST exchange of Bonesteel is in the best public interest of the customers in the exchange for the following reasons:

- a. Adequate local service will be maintained, if not improved.
- b. Buyer intends to have all service and trouble calls answered by employees based in Wall who are familiar with the location and needs of customers in the areas being acquired
- c. Customers will also benefit from reduced labor rates for installations and reduced charges for such items as vertical and CLASS services.
- d. Local rates will not increase as a result of the sale.

- e. Emergency services will be provided to the level the county is capable of offering.
- f. Customers will also have access to such new technologies as CLASS and SS7 on time frames well ahead of when it may have been made available by U S WEST.
- g. Customers will be able to lease simple telephone sets as well as more advanced key systems and PABXs from their local telephone company.
- h. The sale of the exchange to Buyer should enhance the local economy, local businesses, schools, county, and state. In turn, the sale could bring more people to the rural areas, which will promote economic development.
- i. Access for these customers to the Information Super Highway, which Buyer will provide, may result in the betterment of the purchased communities, and more abundant home and community life.

Exhibit 9: Exhibit 165.

#### PAYMENT OF TAXES

- 24. U S WEST currently pays property taxes in South Dakota pursuant to SDCL Chapter 10-33. U S WEST's entire 14-state operating system is valued by the South Dakota Department of Revenue (the Department). The Department identifies the portion of the entire 14-state system value attributable to South Dakota taxable property. The value attributable to South Dakota is then apportioned to each county within South Dakota by the Department. Based upon values received from the Department, the counties prepare tax bills and send them directly to U S WEST. U S WEST then pays the annual tax in two installments. The County Auditor then allocates in each county the amount of taxes received from U S WEST among the other taxing jurisdictions, which include, among others, city, township, and other jurisdictions. Testimony of Brad Blinsmon, Transcript of Pierre Hearing at pages 432-435.
- 25. U S WEST's property taxes cannot be determined on an individual exchange basis because the property taxes are paid on a county basis, and the county boundaries do not coincide with the U S WEST exchange boundaries. Testimony of Brad Blinsmon, Transcript of Pierre Hearing at pages 431-433.
- 26. Evidence demonstrates that U S WEST paid approximately \$1.6 million in 1994 in property taxes for all the exchanges to be sold in South Dakota. Exhibit 71, Attachment.
- 27. Golden West pays gross receipts tax on its existing telephone operations pursuant to SDCL Chapter 10-33.
- 28. Buyer will also pay gross receipts tax on the acquired exchange, at a percentage based on density and number of subscribers per mile. It is estimated that Buyer will pay gross receipts taxes for the exchange as follows:

Exchange	County	%	Amount
Bonesteel	Gregory	100.0%	\$22,100

Exhibit 166 at page 1.

29. Based upon the evidence, the Commission finds that the gross receipts taxes paid by all of the acquiring companies will approximate the \$1.6 million previously paid by U S WEST. Exhibit 71, Attachment; Exhibit 166. Such amount of taxes, however, will be paid to school districts and not to counties and other taxing jurisdictions. Any tax losses suffered by any entity within an exchange are the result of tax distribution problems among taxing entities.

### SWITCHED ACCESS RATES

30. The purchase agreement entered into between U S WEST and the Buyer required that intrastate access rates upon the closing of the sale be established at 7 cents per minute until May 1, 1997, or such other later date as the parties may mutually agree. Exhibit 34. Schedule 2.4, Subsection E.

31. Pursuant to SDCL 49-31-18 and 49-31-19 and ARSD Chapters 20:10:27 to 20:10:29, inclusive, switched access rates are established by the Commission. Thus, switched access rates cannot be contractually stipulated to by telecommunications companies without approval by the Commission.

32. A request was made by the Buyers at the final hearing pursuant to ARSD 20:10:27:02 to waive the Commission's switched access rules in determining the intrastate access rates to be charged by each Buyer.

33. Pursuant to ARSD 20:10:27:14, switched access rates are determined by the adoption of a historical test year. There will not be a historical test period upon which to base a cost study for intrastate switched access rate purposes pursuant to the Commission's regulations until after a period of 12 months.

34. The U S WEST cost-based switched access rate in the areas to be sold, pursuant to ARSD Chapters 20:10:27 to 20:10:29, inclusive, would be 6.7394 cents per minute as determined in Docket TC93-108, In the Matter of the Establishment of Switched Access Rates for U S WEST. In that docket, U S WEST was allowed to charge an interim rate of 3.14 cents per minute as a phased-in rate pursuant to ARSD 20:10:27:20.

35. The current intrastate switched access rates charged by some of the Buyers exceeds 10 cents per minute, which rates have been approved by the Commission in separate proceedings.

36. The Commission finds that an intrastate switched access rate of 7 cents per minute is a reasonable interim rate until May 1, 1997, and finds good cause to waive its switched access rules pursuant to 20:10:27:02.

37. The interexchange carriers who have objected to an interstate switched access rate of 7 cents per minute which will be charged to them by the Buyer have failed to show that state-wide averaged toll rates will increase if the sale is approved. Thus, the 7 cents per minute intrastate switched access rate to be charged until May 1, 1997, should not adversely affect the public.

#### EFFECT ON UNIVERSAL SERVICE FUND

38. Under current FCC rules, the sale of exchanges will have no effect on the amount of money paid by the interexchange carriers to the Universal Service Fund (USF) as the amount paid by these carriers is capped by the FCC. The amount that any individual buyer receives from the USF will depend on a decision from the FCC. The total potential payments from the USF arising from the sale of all 67 exchanges are estimated by the Buyers to be less than \$300,000 out of a total of \$749 million paid nationally in 1995. Exhibit 70 at page 6.

#### GAIN ON SALE

39. U S WEST may have a gain on the sale of certain exchanges. Such gain is the difference between the purchase price and the net investment of the sold exchange. U S WEST has required, as a condition of the sale, that the gain be booked to USOA Account 7350.

40. U S WEST requested that any gain be booked by U S WEST utilizing the FCC's uniform system of accounts codified in 47 C.F.R. Part 32. Part 32 accounting requires that the loss or gain from the sale of telecommunications assets "with traffic" be booked as an Account 7350 event. 47 C.F.R. §§ 32.2000(d)(5) and 32.7350(b). This account is for nonoperating income or expense, neither of which should be included by the Commission or U S WEST in any ratemaking proceeding.

#### REJECTION OF PROPOSED FINDINGS

41. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

#### **CONDITIONS OF SALE**

1. The Commission shall approve the sale of the Bonesteel exchange to the Buyer subject to the following conditions:

- a. That current local rates not be increased for 18 months from the date the Buyer begins to operate the purchased exchange;
- b. That the Buyer shall not recover any of the acquisition adjustment through its regulated interstate or intrastate rates, through its local rates, or through federal or state universal service funds.

c. That the Buyer shall honor all existing U S WEST contracts, commitments, leases, licenses and other agreements which relate to, arise from, or are used for the operation of the purchased exchange;

d. That the Buyer offer, at a minimum, all existing services currently offered by U S WEST in the purchased exchange; and

e. That the Buyer not discontinue any existing extended area service arrangements in the purchased exchange without first obtaining approval from the Commission.

From the foregoing Findings of Fact, the Commission now makes its:

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over U S WEST and the Buyer and the sale of the Bonesteel exchange to the Buyer pursuant to SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, and 49-31-59. At the final hearing the Buyer contested the jurisdiction of the Commission pursuant to SDCL 49-31-59 by claiming that it was an ex post facto law. This argument is without merit since ex post facto applies only to criminal laws and laws that assess penalties. Delano v. Pettys, 520 N.W.2d 606, 608 (S.D. 1994). Moreover, the Joint Application was amended on May 1, 1995, which was after the passage of SDCL 49-31-59. In addition, the purchase agreement entered into between U S WEST and the Buyer specifically provides that the Buyer and U S WEST would file an application to apply for and receive approval by the Commission for the transfer of assets and authorities to the Buyer. Finally, the Buyer did not contest, at any of the hearings, the jurisdiction of the Commission pursuant to the other statutes under which the Commission asserts its jurisdiction.

2. The hearings held by the Commission relative to this matter were contested case hearings pursuant to SDCL Chapter 1-26.

3. The Commission has considered, among other things, the requirements of SDCL 49-31-59 in regard to the proposed sale and the protection of the public interest pursuant to SDCL 49-31-7. The Commission finds that it is in the public interest to approve the sale because the sale will allow customers in the Bonesteel exchange to be better served in the future.

4. U S WEST and the Buyer have satisfied their burden of proof under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, and 49-31-59 for approval of the sale of the Bonesteel exchange.

5. The Commission has considered in reviewing this sale the adequacy of local telephone service. The Buyer is required to provide all services currently offered by U S WEST and may not discontinue any existing extended area service arrangements without first obtaining approval from the Commission. In addition, the Buyer must honor all existing U S WEST contracts and other agreements.

6. The Commission has also considered the reasonableness of local rates. The Commission finds that local telephone service rates for the customers in the sold exchange will remain at the same rates as U S WEST currently charges and there will be no increase in local service rates for at least 18 months. Further, the Buyer is prevented from recovering any of the acquisition adjustment through its local rates.

7. The Commission has determined previously the reasonableness of the local rates for U S WEST.

8. Any existing 911, enhanced 911, and other public safety services provided by U S WEST in the sold exchange will continue to be provided by the Buyer.

9. The Commission has considered the payment of taxes by U S WEST and the Buyer. The Commission has determined that the change in the amount and the form of taxes regarding the sale is not material and should not prevent the sale of the exchange.

10. The Commission has determined that the Buyer has the ability to provide modern state-of-the-art telecommunications services and will help promote economic development, telemedicine, and distance learning in rural South Dakota after the sale.

11. Customers who pay for telephone service do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of a telephone company who provides that service. The gain from the sale that is derived by U S WEST may be booked to USOA Account 7350, and shall not be used for ratemaking purposes by either U S WEST or the Commission.

12. Pursuant to ARSD 20:10:27:02, the Commission finds that good cause has been shown to waive the application of Chapters 20:10:27 to 20:10:29, inclusive, to determine the intrastate switched access rates to be charged by the Buyer for a period from closing until May 1, 1997.

13. Based upon the evidence presented at the hearing, the interim rate of 7 cents per minute for originating and terminating intrastate access rates sought to be charged by the Buyer to interexchange carriers is consistent with the rate currently charged by local exchange companies pursuant to the Commission's rules and regulations regarding switched access rates. If any interexchange carrier believes that such rate is not fair and reasonable and consistent with such regulations of the Commission regarding switched access, then that interexchange carrier may file a complaint with the Commission.

14. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

15. The Commission approves the sale of the Bonesteel exchange by U S WEST to Golden West Telecommunications Cooperative, Inc., through its subsidiary, G.W.S., Inc. subject to the Buyer complying with the Conditions of Sale.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

ORDERED that the sale or the Bonesteel exchange to Golden West Telecommunications Cooperative, Inc., through its subsidiary G.W.S., Inc. is approved subject to the Conditions of Sale; and it is

FURTHER ORDERED that the Commission finds good cause, pursuant to ARSD 20:10:27:02, to grant the request for a waiver of the Commission's switched access rules found in ARSD Chapters 20:10:27 to 20:10:29, inclusive; and it is

FURTHER ORDERED that an interim switched access rate of 7 cents per minute in the Bonesteel exchange for a period from closing until May 1, 1997, is approved; and it is

FURTHER ORDERED that U S WEST's request to retain the gain from the sale for the benefit of its stockholders is granted, and such gain shall be booked to USOA Account 7350 and shall not be used for ratemaking purposes by either U S WEST or the Commission; and it is

FURTHER ORDERED that the proposed findings of fact and conclusions of law submitted by the parties are rejected.

Pursuant to SDCL 1-26-32, this Order becomes effective 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 31<sup>st</sup> day of July, 1995.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u>Kenneth Stofferahn</u></p> <p>Date: <u>8-1-95</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Kenneth Stofferahn  
KENNETH STOFFERAHN, Chairman

James A. Burg  
JAMES A. BURG, Commissioner

LASKA SCHOENFELDER, Commissioner  
Dissenting



## COMMISSIONER SCHOENFELDER'S DISSENTING OPINION

U S WEST is a public utility and has enjoyed the rights granted by statute as such. In return it has an obligation to the people of this state to provide telecommunications services in its certified territories and should not be allowed to sell those exchanges that are in sparsely populated areas and keep only those areas that are more densely populated and thus allow the company to realize a higher monetary return. It should not be allowed to sell its exchanges in its territories that have so far, when blended with the rest of U S WEST's corporation's holdings, not qualified as high cost exchanges. U S WEST should not have the right to pick and choose whom it serves.

This sale will cause an increase in the subsidies flowing from national funds to South Dakota companies in a time in our history when both state and federal regulators and all government officials are trying to reduce or eliminate subsidies.

Customers of telephone services will have a smaller voice in the overall regulation of communications services if this sale is approved because of the reduced jurisdiction of the Commissioners that they elect as their representatives to deal with utility matters.

While the overall difference in dollar amounts of taxes is insignificant, the tax shift at this time in the state's history would be extremely burdensome for local government.

There is no factual demonstration in the record that indicates how the Buyers would be more capable of enhancing and promoting economic development in rural areas. There was no testimony or offers of exhibits that outlined definite plans to promote business development or to extend the ability to telecommute and access to the information superhighway to businesses, farms, and small communities in the newly purchased exchanges.

Competition is developing in telecommunications markets everywhere in America. Because of the demographics and geographics of the most rural states of our country, competition develops more slowly. Competition is the best rate regulator and encourages the use and deployment of new technologies. This sale will stymie the development of competition in those rural areas and rural exchanges or prohibit it entirely. The benefits of competition -- lower costs and more choices -- will be denied to the customers of rural South Dakota.

One of the most significant reasons to deny this sale is the prospect of increased intrastate toll prices. In their testimony, the Buyers have indicated that access rates will be increased. That, of course, will be subject to a decision by this Commission. However, any increase in access rates will result in an increase in toll rates. This increase comes at a time when toll rates should be decreasing because of technology and because of competition. We could, in fact, make South Dakota's rural exchanges high-priced islands in the toll market.

The most significant reason I'm voting to deny the sale of these exchanges is that the customers concerns and needs were never considered. Sales were made to more than one company without taking into account the areas of common interest, access to courthouses, schools, businesses, medical facilities, and emergency facilities. I am aware that companies have verbally agreed to keep extended area service agreements; however, in many areas there are no such agreements. This sale would simply make the existing problems worse.

Even with all of the above objections, I would feel a lot more comfort with this sale, and could perhaps approve of a sale that was structured in the users' interest and where the Buyers, as well as the sellers, requested input from community leaders, business and government, to develop a statewide network that would enhance the development of South Dakota as well as make a profit for all telecommunications companies involved. I do not believe these sales are in the public interest or in the interest of the customers of these exchanges, and neither the sellers nor the Buyers have convinced me of that.

# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE SALE OF CERTAIN	)	DECISION AND ORDER
TELEPHONE EXCHANGES BY U S WEST	)	REGARDING SALE OF THE
COMMUNICATIONS, INC. TO CERTAIN	)	<u>BOWDLE EXCHANGE</u>
TELECOMMUNICATIONS COMPANIES IN	)	
SOUTH DAKOTA	)	TC94-122 - BOWDLE

## PRELIMINARY STATEMENT

On December 20, 1994, a Joint Application was filed by U S WEST Communications, Inc. (U S WEST), and twenty telecommunications companies (Buyers) requesting that the South Dakota Public Utilities Commission (Commission) approve the sale by U S WEST of 67 local telecommunications exchanges to the Buyers or their affiliates. Specifically, the filing sought:

1. A declaration that the sale and transfer of the exchanges do not require Commission approval or in the alternative that the Commission knows of no reason why the sale and transfer should not occur; and
2. An order from the Commission that U S WEST's gain from the sale be booked to Account 7350 of the Uniform System of Accounts (USOA) as nonoperating income not available for ratemaking purposes.

The Commission assumed jurisdiction over this docket pursuant to its authority under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, and 49-31-20. The Commission set an intervention deadline of January 25, 1995. Subsequently, the following parties applied for and were granted intervention: AT&T Communications of the Midwest (AT&T); South Dakota Radio Common Carriers [composed of Pierre Radio Paging and Telephone, Inc.; Vantek Communications, Inc.; B&L Communications; Mitchell Two Way Radio; Nelson Electronics, Inc.; Booker Communications; Dakota Electronics; Rees Communications; A & M Radio, Inc.; Frey's Electronics; and Milbank Communications]; Roger D. McKellips; City of Mobridge; Walworth County; Doug Scott; Alcester Telephone System User's Group [composed of Phyllis Bergdale; Bernard Bergdale; Jay Clark; Cleo Clark; Wendell Solberg; Kathy Solberg; Dennis Jones; Robin Jones; Ronald Treiber; Becky Treiber; Gary McKellips; Deb McKellips; David Broadwell; Kathy Broadwell; Donowan Larson; Marlys Larson; Glenice Pilla; and Larry Pilla]; Midco Communications; LDDS; TeleTech; TCIC; FirsTel; TelServ; MCI; Corson County Commission; Thomas Brunner; Gary Brunner; Deanna J. Mickelson; Marjorie Reder; Duane Odle; Baltic Telecom Cooperative; Barbara Mortenson as an individual and a group of telephone users known as the Henry Users Citizens Group. LDDS later filed a petition to withdraw as an intervenor which was granted by the Commission. On March 30, 1995, Senate Bill 240, later codified as SDCL

49-31-59, became effective. The Commission added this statute to the other statutes under which it had asserted its jurisdiction.

On March 29, 1995, the Commission issued an Order for and Notice of Hearing for six regional evidentiary hearings to be held at various locations throughout the state of South Dakota. Notice of said hearings was given to the public by newspaper publications and radio announcements; personal notice was given to all parties to the docket. Pursuant to said Order of the Commission, and subsequent amended Orders, the following regional evidentiary hearings were held:

1. April 17, 1995, at the City Auditorium, 212 Main Street, Mobridge, South Dakota, for public testimony on the sale of the Selby, Gettysburg, Roscoe, Onida, Bowdle, Morristown, Timber Lake, Lemmon, Eureka, Ipswich, McIntosh, and Mobridge exchanges.
2. April 18, 1995, at the Community Center, 1401 LaZelle, Sturgis, South Dakota, for public testimony on the sale of the Nisland, Newell, and Hermosa exchanges.
3. May 1, 1995, at the St. Mary's Hall, 305 West Third, Winner, South Dakota, for public testimony on the sale of the Winner, Burke, Bonesteel, Reliance, Murdo, Lake Andes, Wagner, Gregory, Witten, Clearfield, Presho, and Platte exchanges.
4. May 3, 1995, at the Lake Area Technical Institute, Student Lounge, 230 11th Street NE, Watertown, South Dakota, for public testimony on the sale of the Webster, Clark, Florence, Hayti, Bradley, Willow Lake, Waubay, Castlewood, Summit, Peever, Veblen, Wilmot, Howard, Oldham, Revillo, and South Shore exchanges.
5. May 4, 1995, at the Johnson's Fine Arts Center, Room 134, Northern State University Campus, Aberdeen, South Dakota, for public testimony on the sale of the Britton, Pierpont, Roslyn, Wessington Springs, Mellette, Bristol, Frederick, Hecla, Doland, Wolsey, and Cresbard exchanges.
6. May 5, 1995, at the Alcester High School Gymnasium, Fifth and Iowa, Alcester, South Dakota, for public testimony on the sale of the Marion, Tyndall, Centerville, Viborg, Lesterville, Tabor, Hudson, Tripp, Parkston, Salem, Alcester, Bridgewater, and Canistota exchanges.

On May 1, 1995, U S WEST and the Buyers filed an amended Joint Application. In its amended Joint Application, U S WEST and the Buyers stated that since the filing of the Joint Application in December, "the sale of several exchanges to certain buyers has been reevaluated by the Buyers." They requested the following changes:

1. In the Agreement with Golden West Telephone Properties, Inc., delete in Exhibit A the Newell exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly;

2. In the Agreement with West River Cooperative Telephone Company, Inc. (Bison), delete in Exhibit A the McIntosh exchange and add the Newell and Nisland exchanges, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly; and

3. In the Agreement with Cheyenne River Sioux Tribe Telephone Authority, delete in Exhibit A the Nisland exchange and add the McIntosh exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly.

Due to the amended application, the Commission set a new intervention deadline of May 12, 1995. Subsequently, the city of McIntosh and Corson County applied for and were granted intervention. Because the application had been amended, the Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, McIntosh, South Dakota, for public testimony.

At each regional evidentiary hearing, representatives from U S WEST and each purchasing company were present to testify and were available for cross-examination.

On April 5, 1995, the Commission issued a Notice of Hearing setting the final hearing for June 1-2, 1995. All prefiled testimony was required to be filed by May 25, 1995. A pre-hearing conference was held on May 22, 1995.

The final hearing was held on June 1-4, 1995. At said final hearing, 42 witnesses testified and were available for cross-examination, 126 exhibits were offered and received into the record at the hearing, and an additional 19 exhibits were filed by June 19, 1995, which was the deadline set by the Commission for late-filed exhibits.

On June 7, 1995, the Commission issued a Post-hearing Order requesting briefs on certain issues and allowing the submission of Proposed Findings of Fact and Conclusions of Law. On June 19, 1995, the parties submitted late-filed exhibits. On June 23 and July 3, 1995, the parties filed their post-hearing briefs and Proposed Findings of Fact and Conclusions of Law.

On July 13, 1995, at a duly noticed meeting, the Commission voted to approve the sale of the Bowdle exchange to Sully Buttes Telephone Cooperative, Inc., which is purchasing the Bowdle exchange through its subsidiary Venture Communications, Inc. [hereinafter referred to as Buyer]. With regard to the purchase of the Bowdle exchange, in conjunction with the sale of all the other exchanges, the Commission has reviewed all exhibits presented at the seven regional evidentiary hearings, and the final hearing occurring in Pierre, and has considered all testimony provided. The Commission having

reviewed the evidence of record and being fully informed in the matter makes the following:

### FINDINGS OF FACT

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. On or about December 7, 1994, U S WEST entered into purchase agreements for the sale of 67 local exchanges with 20 local exchange telecommunications companies. On December 20, 1994, U S WEST and the Buyers filed a Joint Application for a Commission Declaration on the Sale and for Proper Accounting Treatment of any Gain. Exhibit 29. U S WEST and the Buyers filed all 20 purchase agreements along with the Joint Application. Exhibits 31-50. One of the purchase agreements entered into was between U S WEST and the Buyer. Exhibit 45. The Joint Application was amended on May 1, 1995. Exhibit 30.

3. The purchase agreement entered into between the Buyer and U S WEST states as follows:

Seller and Buyer agree to promptly file any required application and to take such reasonable action as may be necessary or helpful (including, but not limited to, making available witnesses, information, documents, and data requested by the PUC) to apply for and receive approval by the PUC for the transfer of Assets and Authorities to Buyer.

Exhibit 45, Section 6.3, subparagraph D.

4. Sully Buttes is a cooperative, and was incorporated in 1952 because of a need for telephone service in rural areas. Sully Buttes has been providing telecommunications service for 43 years, and today provides service in 15 counties in central and northeastern South Dakota, serving over 4,100 access lines. Sully Buttes has a board of directors that is comprised of 12 individuals elected by the membership of the cooperative from the district in which they reside. Sully Buttes' general manager, James Nielson, has been in the telephone industry for 38 years, with 20 years as general manager. Exhibit 26 at pages 37-38; Exhibit 22 at pages 63-64.

5. Sully Buttes is providing modern high quality telephone service to 4,100 customers, with Northern Telecom digital switches, 310 miles of fiber optic cable, and 100% one-party service. Exhibit 26 at page 39; Exhibit 22 at pages 67-68.

6. A duly noticed public hearing was held at Mobridge, South Dakota, on April 17, 1995, at the City Auditorium Fine Arts Center, beginning at 8:00 p.m. concerning, along with other sales, the sale of the Bowdle exchange. There was no public opposition to the sale

of the Bowdle exchange to the Buyer. On June 1-4, 1995, in Pierre, South Dakota, a final hearing was held concerning all of the proposed exchange sales.

7. Jon Lehner of U S WEST testified in his prefiled testimony that "USWC has limited resources to devote to an increasing demand for network infrastructure improvements and new services. Because of growing competition in urban areas, it will be increasingly difficult to make future investments in rural exchanges where USWC's growth opportunities are expected to be low." Exhibit 72 at page 5. Mr. Lehner also testified that "[o]perationally, the buyers are well positioned to provide quality service because they have personnel and supervision dispersed throughout these areas today. All of this translates ultimately to better service for customers remaining with USWC and for the customers in the exchanges to be operated by the buyer." Exhibit 72 at page 6.

#### ADEQUACY OF LOCAL TELEPHONE SERVICE

8. Buyer's main office will be located in Highmore, South Dakota. Sully Buttes currently has 25 full-time employees, most of whom are located at the headquarters in Highmore, but some installer/repairmen are located in its outlying areas. This allows Sully Buttes to have a more personal point of contact with the customers and quicker service response. Buyer intends to add additional personnel. Some of these employees will be located in the acquired exchanges. Sully Buttes currently has 24-hour trouble reporting capabilities, with employees on call 24 hours a day, 7 days a week to restore any service outages. Exhibit 165; Exhibit 26 at pages 49-50; Exhibit 22 at pages 65-66, 70.

9. Sully Buttes' current personnel, plus the planned additions to staff, assure adequate service to the Bowdle exchange.

10. The purchase agreement entered into between U S WEST and the Buyer requires that U S WEST be the designated carrier for intrastate toll for a period of 18 months and will provide host/remote services for a term not to exceed 18 months from the closing date. Exhibit 45, Schedule 2.4, subsections A and B. Buyer will replace the switching equipment in the exchange with equipment that will interface with present switching equipment of Sully Buttes. The new switching equipment will home on Sully Buttes' host switch in Highmore for maintenance and administration capabilities that are more cost-effective. Replacement of switching equipment will occur within 18 months after closing. Exhibit 26 at pages 42, 67-68.

11. Buyer will continue all existing services provided to the customers in the exchange, and will add new services after the switching equipment is replaced. Exhibit 26 at pages 40, 42; Exhibit 22 at page 73.

#### REASONABLENESS OF RATES FOR LOCAL SERVICE

12. Buyer's feasibility studies indicate that the cost of coordinating and upgrading equipment will not affect the local rates in the acquired exchanges. Exhibit 113.

13. Buyer intends to charge the same local rates as U S WEST did in the Bowdle exchange. Exhibit 22 at pages 90-91; Testimony of Jim Nielson, Pierre Hearing Transcript at page 1290.

14. Buyer's pro forma financial projections and the testimony of Kevin Doyle support Buyer's statements regarding rates. Testimony of Kevin Doyle, Pierre Hearing Transcript at pages 1066-1080; Exhibit 113.

15. Pursuant to section 5.1(G) of the contract, the Buyer is prohibited from seeking recovery of the acquisition adjustment through its regulated interstate or intrastate rates, including from federal or state universal service funds. The acquisition adjustment is the amount a Buyer paid over net book value. A representative of the Buyer also testified that the Buyer would not recover any of the acquisition adjustment through local rates. Testimony of Doug Martin, Pierre Hearing Transcript at pages 214-215.

#### PUBLIC SAFETY ISSUES

16. Sully Buttes provides the following public safety services: 911, E911, and firebar services. Exhibit 22 at page 66.

#### ABILITY OF BUYER TO PROVIDE SERVICE

17. Buyer is fit, willing and able (financially and otherwise) to purchase and thereafter operate, maintain and upgrade to the level required by the Commission the facilities of the Bowdle exchange proposed to be purchased by Buyer. Exhibit 113; Exhibit 165.

18. Buyer has the ability to obtain capital, and the incentives to invest in the acquired exchange. The sale is therefore in the public interest for the customers in the acquired exchange, who should see improvements and new services more quickly than if U S WEST continued to operate the exchange. Exhibit 22 at page 70; Exhibit 113.

19. Buyer has obtained commitments to finance its acquisition of the exchange, and has demonstrated the adequacy of such financing and has provided assurances that it will not harm the purchased exchange's operation. Exhibit 22 at page 70; Exhibit 113 at page 8.

20. Buyer has filed with the Commission pro forma financial projections which were subject to cross-examination before the Commission. Exhibit 113.

21. Buyer plans to make the following state-of-the-art services available in the Bowdle exchange: (1) SS7 switching, (2) ISDN, (3) Switched Net 56 service, (4) CLASS features (such as Caller I.D., distinctive ringing, selective call acceptance-rejection-forward), and (5) access to INTERNET. Exhibit 26 at pages 42-43; Exhibit 22 at page 74. The Buyer has filed with the Commission its three-year plan for improvements to the system. Exhibit 165.



22. Buyer is committed to working with the communities in which the exchange is located to ensure that telephone services needed to attract new businesses and to keep existing businesses are available at competitive rates. Exhibit 26 at page 45; Exhibit 22 at pages 75-76.

23. Buyer plans to have the facilities necessary to provide distance learning and telemedicine, just as Sully Buttes has in its existing exchanges. Sully Buttes has been serving in rural communities for many years, and recognizes and understands the importance of continuing to support economic development. Exhibit 22 at page 68-69; Testimony of Jim Nielson, Pierre Hearing Transcript at page 1289.

24. Buyer does not plan to change the existing Extended Area Service arrangements. Exhibit 26 at pages 43-44; Exhibit 22 at page 98.

#### PROTECTION OF THE PUBLIC INTEREST

25. Buyer's purchase of the U S WEST exchange of Bowdle is in the best public interest of the customers within such exchange for the following reasons:

- a. Adequate local service will be maintained, if not improved.
- b. The new customers should receive better service, and the costs of maintenance and repairs should be reduced.
- c. Customers will also have the advantage of and ability to become personally acquainted with their local telecommunications service provider.
- d. Local rates will not increase as a result of the sale.
- e. Emergency services will be provided to the level the county is capable of offering.
- f. Modern state-of-the-art equipment will be installed and maintained. New customers will enjoy first-rate service and have access to the latest technology.
- g. The sale of the exchange to Buyer should enhance the local economy, local businesses, schools, county and state. In turn, the sale could bring more people to the rural areas, which will promote economic development.
- h. Continued investments will be made into the telecommunications infrastructure in the rural areas of the state, guaranteeing access for these customers to the Information Super Highway.

Exhibit 22 at pages 62-108; Exhibit 26 at pages 37-50; Exhibit 165.